IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.12.2006

CORAM

THE HONOURABLE MR. JUSTICE P.K. MISRA
AND
THE HONOURABLE MR. JUSTICE S. RAJESWARAN

HABEAS CORPUS PETITION NO.954 OF 2006

Dhandapani .. Petitioner

Vs.

1. The State of Tamil Nadu,
   rep. by its Secretary,
   Prohibition and Excise Department,
   Secretariat, Chennai 600 009.

2. The District Magistrate and District
   Collector of Vellore District,
   Vellore 9. .. Respondents

This Habeas Corpus Petition has been filed under Article 226 of the Constitution of India praying to issue a Habeas Corpus to call for the records, relating to the detention of the petitioner under Tamil Nadu Act 14 of 1982 vide detention order, dated 30.12.2005, on the file of the second respondent herein, made in proceedings No.C3.D.No.59/2005, quash the same as illegal and consequently direct the respondents herein to produce the petitioner before this Court and set him at liberty from the Central Prison, Vellore.

For Petitioner : Mr.K. Sellathurai
For Respondents : Mr.M. Babu Muthu Meeran
Addl. Public Prosecutor

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O R D E R

(Order of the Court was made by P.K. MISRA, J)

Heard Mr.K. Sellathurai, learned counsel for the petitioner and Mr.M. Babu Muthu Meeran, learned Additional Public Prosecutor for the respondents 1 and 2.

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2. The order of preventive detention on the ground that the detenu is a Goonda within the meaning of Tamil Nadu Act 14 of 1982 is in question.

3. Learned counsel for the petitioner has submitted that even though earlier a Habeas Corpus Petition in HCP.No.263 of 2006 had been filed and it was dismissed on merit, the question now raised in the present Habeas Corpus Petition has not been raised in the earlier Habeas Corpus Petition and therefore, the present Habeas Corpus Petition can be considered and disposed of on merit.

4. In view of several decisions of the Supreme Court, the law is well settled that the question of constructive res judicata may not be made applicable to the Habeas Corpus Petitions.

5. It is submitted by the learned counsel for the petitioner that even though the detenu had been remanded in connection with adverse case and also in the ground case, a copy of remand order has not been furnished to the detenu.

6. It is submitted that as a matter of fact, co-detenu viz. Kutti @ Parasuraman detained on the basis of very same ground case has been released by a Division Bench of this Court in HCP.No.220 of 2006 dated 27.6.2006 on the ground that the copy of the remand order had not been furnished to the detenu and such non-furnishing of remand order vitiated the order of detention. As a matter of fact, earlier Habeas Corpus Petition filed by the present petitioner was dismissed on 20.6.2006 and obviously the order dated 27.6.2006 passed subsequently in HCP.No.220 of 2006 relating to a co-detenu could not have been brought to the notice of the court at that stage.

7. Having regard to the peculiar facts and circumstances of the case, particularly keeping in view the fact that the detention of the co-detenu has been quashed in HCP.No.230 of 2006 dated 27.6.2006, we quash the order of detention dated 30.12.2005.

8. Accordingly, the Habeas Corpus Petition is allowed. The impugned order is set aside and the detenu is directed to be set at liberty forthwith, unless his presence is required in connection with any other case.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

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To

1. The Secretary,
   Prohibition and Excise Department,
   Secretariat, Chennai 600 009.

2. The District Magistrate and District
   Collector of Vellore District,
   Vellore 9.

3. The Public Prosecutor,
   High Court, Madras

4. The Superintendent,
Central Prison, Vellore.

5. The Joint Secretary to Government,
Public (Law and Order)
Fort Saint George, Chennai - 9.

HCP.NO.954 OF 2006

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